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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED
2008 MAR 27 AM 9:40

UNITED STATES OF AMERICA	)	'08 MJ 0935 Case No.
	)	
	)	COMPLAINT FOR VIOLATION OF 21 U.S.C. Sections 952 & 960, Importation of a Controlled Substance
VS	)	
	)	
Gabriel CROSTHWAITE-Montoya	)	
	)	

The undersigned complainant being duly sworn states:

COUNT 1

That on or about March 26, 2008, within the Southern District of California, Gabriel CROSTHWAITE-Montoya did knowingly and intentionally import approximately 101.55 kilograms of Marijuana, a Schedule I Controlled Substance, into the United States from a place outside thereof; in violation of Title 21, United States Code, Sections 952 and 960.

And the complainant states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.

Edward Coderes, Special Agent
U.S. Immigration and
Customs Enforcement

Sworn to before me and subscribed in my presence, this 27th day of March 2008.

United States Magistrate-Judge

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PROBABLE CAUSE STATEMENT

I, Special Agent Edward Coderes declare under penalty of perjury, the following is true and correct.

On March 26, 2008, Customs and Border Protection Officer (CBPO) Jerry Vales was working Pre-Primary roving operations targeted the red 2002 Ford Expedition bearing Baja California license plate AHV7642 driven by Gabriel CROSTHWAITE-Montoya (DOB 03/31/1985). CBPO Vales contacted the CROSTHWAITE and received a negative customs declaration. When asked who owns the vehicle, CROSTHWAITE stated that the vehicle belongs to his father. At this time, CBPO Vales asked for his identification and vehicle registration, CROSTHWAITE handed CBPO Vales a DSP-150/BCC (Border Crosser Card) and a valid 2008 Mexican registration. CBPO Vales noticed that the vehicle is registered under CROSTHWAITE'S name, contradicting CROSTHWAITE'S previous statement. CBPO Vales conducted an intensive examination of the vehicle and noticed the rear quarter panel of the cargo area seemed loose. CBPO Vales was able to look through the seatbelt opening and could see some type of plastic. CBPO Vales proceeded to the rear of the vehicle and opened the rear cargo door where he pried open the rear quarter panel discovering numerous packages wrapped in cellophane. CROSTHWAITE was immediately taken into custody and was escorted back to the security office.

On March 26, 2008, at approximately 0900 hours, while conducting pre-primary operations at the San Ysidro POE, Customs and Border Protection /Canine Enforcement Officer (CBP/CEO) Kenneth Lawson along with his

Narcotics Detection/Human Detection Dog (ND/HDD) "Henry" (CF-26) responded to a radio call for a possible narcotics laden vehicle on lane 19. CBP/CEO Lawson proceeded to screen the red 2006 Ford Expedition bearing Baja California license plate AHV7642 with "Henry" who alerted to the odor of narcotics emanating from the rear, driver's side quarter panel, on their initial pass around the vehicle. At this point, the vehicle was sent to be X-rayed and the procedure revealed to CBP Officers several packages concealed inside the driver's side rear quarter panel. The vehicle was then sent to secondary lot for further inspection.

While in the secondary lot, CBPO Pablo Chavarry was assigned to do a seven (7) point inspection of the vehicle. During inspection, CBPO Chavarry first removed one (1) package from the passenger side rear quarter panel then probed it, revealing a green leafy substance field tested positive for the characteristics of marijuana. CBPO Chavarry removed eleven (11) packages from the dash board area, eleven (11) packages from the passenger rear quarter panel, eight (8) packages from the driver side rear quarter panel, five (5) packages from the right front bumper, and five (5) packages from the left front bumper. CBPO Chavarry removed a total of forty (40) packages from the vehicle for a total aggregate weight of 101.55 kilograms (223.41 pounds).

On March 26, 2008, at approximately 0915 hours, Post Miranda, CROSTHWAITE, agreed to make a statement to U.S. Immigration and Customs Enforcement (ICE) Special Agents (SA) Enrique Martinez and Edward Coderes. SA Martinez read CROSTHWAITE'S Miranda rights from a pre-printed form as

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witnessed by SA Coderes. CROSTHWAITE waived his rights and agreed to answer question without an attorney present. During interview, CROSTHWAITE stated that he will be paid $1200.00 (US Currency) for driving the vehicle heavily laden with marijuana across the United States-Mexico border through the San Ysidro POE, to the Plaza de Las Americas Mall in San Ysidro, California. Furthermore, CROSTHWAITE stated that he was instructed to park the vehicle somewhere in the mall's parking lot where he will wait for a call from the smugglers to arrange pick up of the vehicle. CROSTHWAITE further stated that he did not know exactly what type of drugs were inside the vehicle and he did not know the exact amount, however, CROSTHWAITE stated that he thinks that the vehicle is loaded with marijuana. CROSTHWAITE stated that a person known only as "COMPADRE" FIRST NAME UNKNOWN, LAST NAME UNKNOWN (FNU) (LNU) offered to pay him the $1200 for the job and was the same person who gave him the vehicle.

A video-recorded re-interview in Spanish of CROSTHWAITE was conducted in the presence of SA Ed ward Coderes, SA Enrique Martinez and San Diego Police Officer Luis Benavides. CROSTHWAITE was read his Miranda rights in the presence of these agents, waived his rights and executed a written waiver, which indicated that he agreed to answer questions without an attorney present. During the interview, CROSTHWAITE was lucid and did not appear to be ill, intoxicated or under the influence of drugs. He was alert, responsive and appeared capable of communicating, and he offered appropriate responses to questions. He did not appear to be unusually nervous or fearful.

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CROSTHWAITE did not request or receive any bodily comforts during the interview and no promises or threats were made to elicit the statement. No breaks were taken during the interview and it ended at approximately 1110 hours.

During the interview, CROSTHWAITE made the following statements. CROSTHWAITE stated that he was to be paid $ 1200 U.S. currency for driving the vehicle across the U.S. / Mexico border. CROSTHWAITE stated that COMPADRE gave him the vehicle at approximately 0700 hours and he was instructed to drive the vehicle across the U.S. / Mexico border. CROSTHWAITE then stated that his instructions were to the drive the vehicle across the border then to turn around and head back to Tijuana, contradicting his previous statement. CROSTHWAITE further stated that this first attempt was suppose to be a trial run and that he was assured by COMPADRE that there were no drugs inside the vehicle. When asked about the vehicle registration, CROSTHWAITE stated that COMPADRE asked for his identification cards which he willingly gave, for the purpose of registering the vehicle under his name. When asked about when was he recruited by COMPADRE, CROSTHWAITE stated that he knew COMPADRE as a person who hangs around Tijuana who likes to smoke marijuana and that one day about six (6) months ago, COMPADRE asked him if CROSTWAITE had legal documents to cross into the United States. CROSTHWAITE told COMPADRE that he does and that he crosses the border often. COMAPADRE offered him the job of driving a vehicle across the border loaded with drugs then but CROSTHWAITE refused, thinking that it was too

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dangerous. CROSTHWAITE also stated that from then on COMPADRE kept asking him to do the job and kept telling CROSTHWAITE that he will be compensated for his efforts, but CROSTHWAITE kept declining the offer until a few days ago. When asked about his reasons for changing his mind and accepting the job offer from COMPADRE, CROSTHWAITE stated that he needed money for his girlfriend's operation.

During the interview, CROSTHWAITE insisted that this attempt was suppose to be a trial run to boost his confidence, and that he was told by COMPADRE that there were no drugs in the vehicle. However, CROSTHWAITE stated that upon his return to Tijuana the vehicle would then be loaded with an undetermined type and undetermined amount of drugs, where he was to deliver the vehicle to the Plaza de Las Americas mall in San Ysidro, California where he will wait for a call from an unidentified individual who will make arrangements for picking up the vehicle. When asked what he thinks the type of drugs would the vehicle be likely loaded with, CROSTHWAITE stated that he believes that the vehicle would likely be loaded with marijuana.

Gabriel CROSTHWAITE-Montoya was arrested and transported to the Metropolitan Correctional Center, San Diego, CA, for custody and judicial proceedings.

Executed on March 26, 2008 at 1110 hours.

Edward Coderes [signature] .
Special Agent
U.S. Immigration and Customs Enforcement (ICE)

[signature] 3/27/08

WILLIAM McCURINE, JR.
U.S. MAGISTRATE JUDGE

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On the basis of the facts presented in the probable cause statement consisting of five (5) pages, I find probable cause to believe that the defendant Gabriel CROSTHWAITE-Montoya named in the probable cause statement committed the offense on March 26, 2008 in violation of Title 21, United States Code, Section (s) 952 & 960 and United States Code Section 2.

W McCurine Jr. 3/27/08

United States Magistrate Judge